

In order to prove that home foreclosure constituted an urgent, compelling, and necessitous reason to quit and move out-of-state, the claimant must show steps to confirm her belief that she could not afford alternative housing in the area.



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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Board Of Review Decision

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Introduction and Procedural History

Board of Review letterhead

The claimant appeals a decision by a review examiner of the Division of Unemployment Assistance (DUA) to deny benefits following the claimant's separation from employment. We review pursuant to our authority under G.L. c. 151A, § 41 and affirm.

Benefits were denied after the review examiner determined that the claimant did not leave the employer for urgent, compelling and necessitous reasons and, thus, was subject to disqualification pursuant to G.L. c. 151A, § 25(e). After considering the recorded testimony and evidence from the DUA hearing, the review examiner's decision, and the claimant's appeal, we remanded the case back to the review examiner to make additional findings. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record, including the decision below and the consolidated findings.

The claimant was separated from employment on June 2, 2008. She filed a claim for unemployment benefits with the DUA and was awarded benefits in a determination issued by the agency on July 25, 2008. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, which only the employer attended, a review examiner reversed the award of benefits in a decision rendered on September 22, 2008. Both the claimant and the employer attended the remand hearing.

The issue on appeal is whether the claimant's resignation from the employer to relocate to Florida for financial reasons constituted an urgent, compelling and necessitous reason for her leaving.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessments are set forth below in their entirety:

1. The claimant worked as a senior in put/out put clerk and she was employed from December 1993 until her separation on June 2, 2008.
2. The claimant left the job to relocate.
3. The claimant's job was not in jeopardy.
4. The claimant had been allowed a three month personal leave of absence prior to resigning the job. The claimant was paid ten days vacation pay that she had on record and the remainder of the leave of absence was without pay.
5. The claimant was on paid vacation from 4/1/08 through 4/14/08.
6. The claimant was on a personal leave of absence from 4/15/08 through 6/30/08.
7. According to the computer records the claimant's average weekly wage was \$763.00.
8. The claimant was informed by her principal that a personal leave could be granted for a three month period only.
9. The claimant gave no in depth reason for the leave of absence other than personal, and she was not asked anything further about her reasons.
10. The claimant's job was an intricate part of the operation of the school and her abrupt resignation was a problem for the school.
11. The claimant requested the leave because the family home that she had been living in for 25 years was foreclosed upon in March 2008. The claimant needed the time because she was running back and forth between her lawyer and the bank trying to get the house out of foreclosure. Also during this time period the claimant's six year old grand daughter was admitted to the hospital with a diagnosis of terminal cancer.

12. The claimant was not able to think straight due to all the problems that were going on. Even before she asked for the leave of absence her doctor had told her to take a leave of absence for medical reasons, but she chose not to do this.

13. At the time the claimant requested the leaving of absence it was not under doctor's orders.

14. Although the union rules indicate that the employer will only allow for a three month leave of absence the employer could have given up to a six month leave of absence had she requested an extension and had they been made aware of the problems that she was having.

15. The claimant was unaware that an extension would be allowed and only had information from the principal that she could only have three months.

16. Prior to the leave of absence ending the principal contacted the claimant and asked that if it was her plan to resign would she mind giving her resignation in early so that the school could begin the process of replacing her.

17. Based on the principal's inquiry the claimant resigned effective 6/2/08 rather than waiting until the end of the leave of absence which would have been 6/30/08.

18. The human resource manager believes that the principal may not have known that an extension of the leave of absence would have been a possibility.

19. The claimant's job would have continued to be available to her had she not made the decision to relocate.

20. The claimant considered going back to work for the instant employer and trying to live on her one income and stay in Massachusetts, but she didn't believe that it would be possible on her income, only.

21. The claimant gave the following information to a Division of Unemployment Assistance (DUA) representative during a telephone interview:

Why did you quit this job? *Claimant states she had to quit her job due to her home being foreclosed. Claimant states she had no where to go so her son took her in. Claimant now lives in Florida with son and daughter in law.*

What were the results? *I had to relocate with my son and daughter in law in Florida*

If you did not try to resolve the situation why not? *I just tried to save my home*

Did you request a leave of absence so that you could resolve the matter? *Yes*

If yes, what was the result and if needed did you ask for an extension? *I was on a leave of absence for three months to try to save my house but I was not successful. I knew at the end of the eviction that I lost my home and had no place to go so I moved in with my son in Florida.*

Ruling of the Board

The Board adopts the review examiner's consolidated findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

G.L. c. 151A, § 25(e), provides in pertinent part, as follows:

. . . An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

The review examiner initially concluded that the claimant's reasons for leaving were not for such an urgent, compelling, and necessitous nature as to make her separation involuntary. Only the employer attended the initial hearing. We remanded the case to allow the claimant to testify.

In light of the consolidated findings of fact, we conclude that the claimant did not quit her employment for an urgent, compelling, and necessitous reason. The claimant failed to satisfy her burden of proof. When confronted by difficult personal circumstances, the claimant did not produce any evidence to substantiate her belief that she could not find alternative housing within commuting distance of the employer or to show that she could not afford to stay in the area.

We, therefore, conclude as a matter of law that the claimant did not sustain her burden to prove that the reasons for leaving were for such an urgent, compelling and necessitous nature as to make her separation involuntary.

The DUA review examiner's decision is affirmed. The claimant is denied benefits for the week ending June 7, 2008 and for subsequent weeks thereafter, until she has had eight weeks of work and in each of those weeks has earned an amount equal to or in excess of her weekly benefit amount.

BOSTON, MASSACHUSETTS

DATE OF MAILING - January 14, 2009

/s/

Donna A. Freni
Member

/s/

Sandor J. Zapolin
Member

Chairman John A. King, Esq. declines to sign the majority opinion.

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

LAST DAY TO FILE AN APPEAL IN COURT – February 13, 2009

MS/ jv